THE ADMISSIBILITY OF ADMISSIONS BY AN INSURED AS AGAINST A BENEFICIARY.—An interesting case involving the use of an assured's admissions in an action by the beneficiary on an insurance policy is *Metropolitan Life Ins. Co.* v. *O'Grady,* 80 S. E. 743, (Virginia, 1914.) In this suit to recover the amount of the policy, the Insurance Company set up in defence that assured had falsely misrepresented his age and the condition of his health in his application for the policy, and in proof thereof offered in evidence his admissions made prior to the application. The court held that the admissions were incompetent against the beneficiary for two reasons; first, that the assured could not bind the beneficiary by his admissions, and second, that the admissions were not against the declarant's interest when made.

Resting upon the first ground assigned, the decision is unquestionably in harmony with the majority of adjudications. There is in general no privity of interest nor agential relation existing between the assured and the beneficiary by reason of which the latter should be bound by the former's admissions. *Lahrs* v. *Lahrs,* 123 N. Y. 367; *Bagley* v. *Grand Lodge,* 131 Ill. 498; *Richmond* v. *Johnson,* 28 Minn. 447; although some of the language in *Swift* v. *Mass. Mutual Life Ins. Co.,* 63 N. Y. 186, indicates the existence of the relation of agent; and the general rule is that admissions of the assured are not competent against the beneficiary in an action by the latter on the policy. *Union Central Life Ins. Co.* v. *Pollard,* 94 Va. 146; *Schwarzbach* v. *Protective Union,* 25 W. Va., 622; *Ins. Co.* v. *Morris,* 3 Lea (Tenn.) 101; *Hermany* v. *Fidelity Mut. Life Ins. Co.* 151 Pa. St. 17; *Penn Mut. Life Ins. Co.* v. *Wiler,* 100 Ind. 92; *Union Cent. Life Ins. Co.* v. *Cheever,* 36 Ohio St. 201; *Washington Life Ins. Co.* v. *Haney,* 10 Kas. 525. Various modifications arise under particular forms of insurance contracts. It has been held, for instance, that when the assured retains a dispositive power over the beneficial interest in the policy, his admissions bind the beneficiary. In such a case the beneficiary has, until the death of the assured, no vested interest in the policy, but only an expectancy; and claiming through the assured, is bound by his admissions. *Steinhausen* v. *Preferred Mut. Accident Ass'n.* 13 N. Y. Sup. 37; *Life Ass'n.* v. *Winn,* 96 Tenn. 224. And they may come in under the rule of res gestae although not competent as admissions, strictly speaking. *Sutcliffe* v. *Traveling Men's Ass'n,* 119 Ia. 220; *Henn* v. *Metropolitan Life Ins. Co.* 67 N. J. L. 310. Statements by the assured that the policy has been forfeited have also been held admissible, though it seems difficult to justify this exception on reason. *Manhattan Life Ins. Co.* v. *Myers,* 109 Ky. 372. If, however, the facts as to his health or age have been established by other evidence, assured's admissions are always competent to show his knowledge of the facts and fraudulent intent. This is recognized by the principal case. See also *Union Cent. Life Ins. Co.* v. *Pollard,* supra; *Rawson* v. *Ins. Co.,* 115 Wis. 641; *Towne* v. *Towne,* 191 Ill. 478.

The second reason given by the court, that admissions are incompetent which were not against interest when made is questionable. In support of this reasoning the court cites GREENLEAF, EVIDENCE, § 179, and two early Virginia cases, *Burton* v. *Scott,* 3 Rand. 399, and *Caines' Admin.* v. *Alexander,* 7 Grattan 257. So far as the decision rests upon the authority of GREENLEAF, it

is evidently the result of misapprehension of the rule stated in that work. The court quotes the following from GREENLEAF, § 179; "The admissions which are thus receivable in evidence must be those of a person having at the time some interest in the matter afterwards in controversy, in the suit to which he is a party." Reference to the context will show, however, that Prof. GREENLEAF had in mind only the use of admissions against one suing in a representative capacity made before his investiture with that trust, for in the next sentence the author puts the following illustration: "The admissions, therefore, of a guardian, or an executor or administrator, made before he was completely clothed with that trust, or of a prochein amy, made before the commencement of suit, cannot be received either against the ward or infant in the one case or against himself as the representative of heirs, devisees, and creditors, in the other." The case of *Gaines' Admin.* v. *Alexander,* supra, falls squarely within this principle, and the statement of the court that all admissions must have been against interest at the time is mere dictum. Examining Mr. GREENLEAF'S work still further, it is found that he has not only not countenanced, but has on the contrary explicitly repudiated such a rule. In § 169 he says, "Plaintiff's statement at a prior time that he lent the defendant fifty dollars throws discredit on his present claim in the pleadings that he lent one hundred dollars. The evidential weight of the inconsistency may be greater if his prior statement was against his interest—as if he declared that he never lent the money at all—but that is not essential to its admissibility." And again in the same section he says of admissions, "There is nothing in their nature which entitles us to say that they are explainable only as made against the person's interest." Prof. GREENLEAF'S view accords, moreover, with that of at least two other great commentators on the law of evidence. In WIGMORE, EVIDENCE, § 1048, subd. 2, the author says, "The subject of an admission is not limited to facts against interest at the time. * * * * * On principle it is plain that every prior statement of a party exhibiting an inconsistency with his present claim tends to throw doubt upon it, whether he was at the time speaking apparently in his own favor or against his own interest." And later on he characterizes the opposite rule as "a fallacy, in the fullest sense." To the same effect see CHAMBERLAYNE EVIDENCE, § 1383, in which the existence of adverse interest is treated as going to the weight, rather than to the admissibility, of such evidence.

The decision in *Burton* v. *Scott,* however, fully supports the principal case. In that case the court ruled that admissions, to be competent evidence, must have been against interest when made, saying, "The true meaning and sense of the rule that declarations of parties may be given in evidence against them is the reasonable presumption that no person will make any declaration against his interest unless it be founded in truth." It is believed that this decision is exceptional rather than the general rule, and that it is due to a confusion of the rules governing admissions and those in regard to the declarations against interest of third persons. Extra-judicial statements of third persons are mere hearsay, and are properly excluded unless against interest, because there can be no guarantee of their truth. An exception to this rule has arisen in favor of declarations against a pecuniary or proprietary

interest, a substitute for the binding effect of the oath being found in the presumption that no one would speak falsely against his own interest. That admissions of parties to a suit stand on an entirely different footing is evident from the fact that even where an adverse interest is required, it is never limited to a pecuniary or proprietary interest. They are received rather on the theory that any words or acts of a party inconsistent with his present position are relevant to the issue. Even if such statements were self-serving and false they should still be admissible as showing his disposition to depart from the truth to further his own ends.

Admissions not against interest at the time have been received in many cases. *Wilson* v. *Minneapolis etc. Ry. Co.,* 31 Minn. 481; *Shiland* v. *Loeb,* 69 N. Y. Sup. 11; *Smay* v. *Etmire,* 99 Ia. 149; *State* v. *Willis,* 71 Conn. 283; *State* v. *Anderson,* 10 Ore. 448; *State* v. *Mowry,* 21 R. I. 376. In some instances the courts have received such admissions only for the purpose of impeaching the bona fides of the present claim. *Skillman* v. *Leverich,* 11 La. 517; *Lord* v. *Bigelow,* 124 Mass. 185; *Glen* v. *Lehnen,* 54 Mo. 45. But these considerations go to the probative value of different classes of admissions, and not to their admissibility.

It would seem therefore that upon this point the principal case is in conflict with the understanding of the most eminent commentators and with a majority of the decisions in courts of last resort. S. S. W.

THE EXTRATERRITORIAL EFFECT OF EXEMPTION LAWS.—The case of *John H. Schroeder Wine and Liquor Co.* v. *Willis Coal and M. Co.,* 161 S. W. 352, recently decided by the St. Louis Court of Appeals, throws some light on the very confused subject of the extraterritorial effect of exemption statutes. The facts of the case are as follows:

A Missouri corporation was garnisheed in the courts of that state by the creditor, also a citizen of Missouri, for a debt owed by a citizen of Illinois. The fund attached was wages, owed by the garnishee to the debtor for labor performed in Illinois, and payable there. The debtor was summoned by publication and did not appear personally. Under the Illinois Statute the wages of the head of a family are exempt to the amount of $15.00 per week and the employer must pay that amount notwithstanding any writ of garnishment. Under the Missouri statute no one can be charged as garnishee for more than 10% of any wages.

Under these facts the Missouri Court applied the Illinois Statute. They based their decision entirely upon the principle of comity between the several states. The court said in part "the courts of our state commonly recognize the laws of another state when the general policy of the two states on the subject is alike. That this is the case with respect to the statutes of Illinois and those of our own state on the matter of exemption of wages from garnishment proceedings is clear. There is a difference in the amount of exemption; there is no difference whatsoever in policy. * * * Shall we applying the Illinois law by comity hold them exempt in our jurisdiction? We answer this in the affirmative."